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### Certainty of Legal Distribution of Inheritance through Grants (Study in Dompu District, Dompu Regency)

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#### **Abstract**

This study aims to analyze and examine the factors that influence the distribution of inheritance through grants in Dompu District, as well as reviewing the legal certainty of inheritance distribution through grants in Dompu District.

The results of the study show that: Factors that influence the distribution of inheritance through grants to the Dompu Sub-District Community are Concern Factors of family conflict, Economic Factors and Efforts to protect the absolute part of the heirs. In terms of the distribution of inheritance through grants to the Dompu Subdistrict community, there is no legal certainty, that with empirical facts on the people of Dompu Subdistrict, there are still many inherited disputes from heirs after the parents as heirs die. began on some heirs who did not have good intentions and denied the results of the agreement in terms of the distribution of inheritance through grants agreed together by all heirs, which is a customary practice from generation to generation in the Dompu community, then the heirs demanded back in share based on Islamic inheritance law, under the pretext that if a family (Islam) has two laws that apply such as customary law and Islamic law, then as long as the community must obey and comply with the provisions of Islamic law as well. If the heirs still cannot agree and feel an objection regarding the inheritance given by the heir by means of the heir's gift during his lifetime, then it can be resolved through the Religious Court. This is in accordance with Article 49 of Law No. 3 of 2006 concerning the Religious Courts. But these things affect the harmony and division within the family. That from the results of research on inheritance events in the Dompu community.

**Keywords:** Certainty; Inheritance; Grant

#### **Introduction**

Indonesia as a legal state based on the 1945 Constitution of the Republic of Indonesia aimed at ensuring certainty, order and legal protection for all Indonesian people. The law is not only related to the obligation to the provisions of the Act, but also includes unwritten laws, such as the customs of the people.

Diversity of Religion, ethnicity and culture in the Unitary State of the Republic of Indonesia greatly influences the development of law and life in the midst of the Indonesian people, as in Indonesian

inheritance law applies various kinds of inheritance law, starting from the inheritance law, inheritance law, and Inheritance Law of the Civil Code (KUHP).

Inheritance is an important matter for human life, because inheritance must be experienced by everyone in the family, if it is not clearly regulated it will have the potential to cause problems within the Indonesian family.

In inheritance law in Indonesia has its own characteristics in implementing inheritance distribution, starting from customary law that cannot be separated from the lives of people in various regions in Indonesia, because every member of the community in each region always adheres to the traditional law that has been lived and has its own place in the development of the lives of the Indonesian people, this is reflected in the habits passed down through the Indonesian people.

The transfer of inheritance after the heir dies is a universal process in every inheritance law, but the transfer of property before the heir dies, is unusual in inheritance law in general, but the provision of property during life is certainly a form of social phenomena that commonly occur among indigenous peoples in general, as is the case with the Dompu District community who gave inheritance through grants.

In Dompu's inheritance customary law, boys are the main heirs, but boys cannot deny the provision of property by their parents during their lifetime to girls, and vice versa. This is based on the principle that parents (heirs) are free to determine to share property with their children at the discretion of parents who do not distinguish love from their children through the distribution of inheritance through grants during the parents' lives.

Although most of the Dompu sub-district communities are Muslim and are relatively obedient in carrying out the teachings or provisions in Islam, in matters of inheritance, they are still inclined to carry out inheritance distribution using a system of customary law, namely hereditary habits that is when parents are still with a grant system that has been agreed upon and determined by parents as heirs, it shows that the customary inheritance law is still alive and has its own place in the Dompu District community.

L.W.C. Van Den Berg in his theory *Receptio in Complexu* teaches that Islamic law is accepted as a whole by Muslims.<sup>1</sup> Then came the *Receptio* theory which states that the law that applies to Muslims is their respective customary law, Islamic law can apply if it has been perceived by customary law. This also relates to the strong influence of Islamic teachings that have an influence on the development of Dompu's inheritance law, although it still tends to use traditional inheritance law, but on the other hand Dompu customary law has accepted Islamic inheritance law, because in the teachings of the Islamic religion 'an and Al-hadist which contain basic guidelines about structuring human life normatively, both in terms of personal life, family life, and community life, which also details governing inheritance.

Sociologically inheritance customary law in Dompu is more dominant in distributing inheritance through grants to heirs when *Pewaris* is still alive with deliberation. As an example; a family consisting of father, mother, and two children, one son and one daughter. The first boy had earned a bachelor's degree and had worked as a civil servant in a government agency, while the second child was a female in elementary school. In this situation, when both parents will give a gift, then the gift is divided based on their individual needs, of course the part they will get is different. Outwardly, indeed the part they get is different, but if you think about it further, actually the oldest child has enjoyed and received more of his parents' wealth compared to his own brother, because all the costs of his education have come from his parents.

## **Research Methods**

### **1. Types of research**

<sup>1</sup> Ahmad Rofiq, *Hukum Islam di Indonesia*, Jakarta: Raja Grafindo Persada, 1995, p. 13.

Jenis penelitian hukum yang digunakan oleh Peneliti dalam penelitian hukum ini adalah penelitian Normatif empiris. Menurut Abdulkadir Muhammad, pengertian metode penelitian, yaitu :

“Metodelogi berasal dari kata dasar metode dan logi. Metode artinya cara melakukan sesuatu dengan teratur (sistematis) sedangkan logi artinya ilmu yang berdasarkan logika berpikir. Metodelogi artinya ilmu tentang cara melakukan sesuatu dengan teratur (sistematis). Metodelogi penelitian artinya ilmu tentang cara melakukan penelitian dengan teratur (sistematis). Metodelogi penelitian hukum artinya ilmu tentang cara melakukan penelitian hukum dengan teratur (sistematis)”<sup>2</sup>

## 2. *Research Approach*

The approach method that I use in this study is:

### a. Statute Approach

According to Peter Mahmud Marzuki, “Approach to the Law, namely:

The statute approach is carried out by examining all laws and regulations relating to the legal issues being addressed. For researchers for practical activities, this Law Approach will open opportunities for researchers to study whether there is consistency and conformity between an Act and other Laws or between Laws with the Basic Laws or between regulations and laws.<sup>3</sup>

### b. Conceptual Approach

According to Peter Mahmud Marzuki, “The conceptual approach, namely:

The conceptual approach moves from the views and doctrines that develop in law. By studying the views and doctrines in law, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the issues at hand.<sup>4</sup>

### c. Socio Legal

According to Mukti Fajar ND and Yulianto Achmad in Salim HS and Erliana Septi Nurbani the legal sociology approach, namely:

The legal sociology approach is an approach that analyzes how reactions and interactions occur when the norm system works in society. Besides that, it is also known as the sociological approach to law. This approach is constructed as something that is the behavior of a steady, institutionalized and socially legitimate society.<sup>5</sup>

## *Result and Discussion*

### 1. *Inheritance distribution system in Indonesia in general*

<sup>2</sup> Abdulkadir Muhammad, 2, *Op. Cit*, p. 57.

<sup>3</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, 2nd edition of the first print. Kencana Prenada Media Group, Jakarta, 2006, p. 93

<sup>4</sup> *Ibid*, p.95

<sup>5</sup> Salim HS dan Erliana Septi Nurbani, (3) *Op. Cit*, p. 47.

As explained in the background of this paper, the law of inheritance in Indonesia up to now is still in various forms, these three legal systems have characteristics & characteristics, each group of people including their respective laws, among others, can see in the Islamic community, Islamic inheritance law applies, regarding inheritance distribution procedures, the size of the portion between boys and girls, adopted children, judicial institutions who have the right to examine & decide inheritance disputes in the event of a dispute between heirs and so on. For the non-Muslim community groups, they are subject to their respective customary laws; the side is influenced by the elements of religion & belief. From the explanation above, it also causes differences in the meaning & meaning of inheritance law for each population group.

In the distribution of inheritance in the Qur'an the share of boys and girls is 2: 1 and in the 1980s, for example, the Minister of Religion of the Republic of Indonesia Munawir Syadzali, gave the idea that the distribution of inheritance for Indonesian Muslims provided a part that same between men and women. However, the idea was strongly opposed by ulama in Indonesia for reasons contrary to the verses of the Koran.

Actually in the distribution of inheritance has been explained in the Qur'an about how to divide the treasure by means of Islamic law and fairly, Allah says in the Qur'an regarding the distribution of heirlooms for heirs and those who are not entitled receive the distribution of the heirlooms, in An-Nisa Ayat 11-12 in the firm:

The above verse speaks of the rights of girls and the rights of boys in the distribution of inheritance, namely 2: 1 and regulates the acquisition of widowers with two lines of law, matters of will and debt. The acquisition of widows with two legal lines, the question of will and debt and the acquisition of brothers in terms of the two legal lines, the question of will and debt.

In the etymology Dictionary of Ursuline Jurisprudence Science comes from the word *ara arafa*, *yu'rifu* which is often interpreted by *al-ma'ruf* with the meaning of something known. *Urf* is known by the community and is a habit among them in the form of words or deeds or habits or regional laws that can be coupled with Islamic law.

In Islamic inheritance law there are several conditions that must be fulfilled. The requirements for the inheritance distribution are three of them:

“(1). Muwarrist, namely the person who inherits his property or mayyit who leaves his property. (2). Al-Warits or heirs, namely those who have family relations, either because they have blood relations or because of marriage or as a result of freeing slaves. (3) Al-Mauruts or Al-Mirats, namely the estate's inheritance after deducting the cost of caring for the corpse, paying off debts and carrying out a will. “

## **2. *Distribution of inheritance by means of grants in Dompu sub-district***

In the customary law of inheritance, the Dompu community basically adheres to a patrilineal family system or draws a line from the side of the father, in this case the boy becomes the main heir, but in the Dompu community the giving is based on equal distribution to the women. Distribution of inheritance in the Dompu community can be done in two ways, namely before the heir dies by means of a grant and after the death of the new heir, the inheritance is open and can be shared.

In the practice of distributing inheritance in Dompu District, Dompu District, the distribution of inheritance mostly uses traditional inheritance law.

As the result of the interview of the author with Mr. Haji Anwar as a Community Leader in the Dorotangga Sub-District of Dompu Sub-District, Dompu District, he explained:

“In the distribution of inheritance in Dompu District, Dompu Regency. More is found using a custom system that comes from the habits of the local people who have been used for generations in Dompu.”

“In Dompu Subdistrict in terms of determining the part for the heirs, there are two concepts, namely Before the heir dies, the entire inheritance will be divided by means of an oral grant, all heirs are notified of any part for him, the heirs have no right to protest against the -the part that has been determined by his parents.”

Furthermore, Mr. Khaerul, his staff explained that:

“In terms of determining the part for the heirs of the Dompu community, namely when the heir dies, the inheritance is divided equally, for example there are goods but only the house left by the parents, the one who is the youngest woman is not shared if the house, unless there are other items then the other items will be shared by all the brothers and sisters.”

In terms of the distribution of inheritance through grants and when parents still live in the Dompu Sub-district community prioritizes boys, when the parents as inheritors leave only inheritance in the form of houses and are donated to the youngest female heirs or *Ana cumpu kaina* (Language Bima), to be occupied. This is because the youngest female child has an important role in daily life to take care of household affairs, the youngest child who plays the most important role if her parents are sick compared to boys, besides that the reason the youngest daughter is preferred in giving a house grant as inheritance compared to boys, because long before his parents died, the boy had obtained more of the assets before the distribution of inheritance because his parents had paid more for the boys than the daughters, both in the form of education and marriage which the financing originating from the property of his parents, while the daughter did not receive a high education, and therefore she did not receive sufficient income.

The existence of customary inheritance laws or habits that live and develop in the Dompu community becomes an interesting thing to observe, in terms of inheritance distribution that the Dompu community has more tendency to customary law when compared to inheritance rules in Islamic law, Dompu customary law focuses more on implementing inheritance when the heir is still alive by means of a grant, although not all but many are found to practice grants in inheriting their property under the pretext of the heir to avoid internal family conflict and division when the heir dies.

There are some problems that are almost often found, namely the problem when the heir dies, from the division between boys and girls who are tried equally by parents as heirs, besides that in the distribution of inheritance through these grants, many centralized unbalanced divisions are found to one of the children who is willing to give a grant in excess of 1/3 (One-third) on the grounds that one of the children contributed a lot and took care of the heir, so giving the property exceeded the provisions of the Compilation of Islamic Law in article 210 paragraph (1) said in the grant only just 1/3 (one third) of all the assets they have justified, below the author has interviewed and analyzed the distribution of inheritance by way of grants in Dompu sub-district.

#### *Case I (Dorotangga Village)*

“H. Zakariah is married to Hj. Aminah in 1960 with an Islamic process, they were blessed with 5 children, 3 boys and 2 girls. But in 2002 their mother Hj. Aminah has died. So before the dispute between them, their father H. Zakariah took the initiative to divide the inheritance. Heritage property in the form of houses and large land. So the five children were gathered to discuss the division. Their father gave all of them how they were divided according to customary law or Islamic law. But they agreed because they were Muslim, so the distribution was carried out according to Islamic inheritance law where boys got 2 parts compared to girls. However, among H. Zakariah’s children, there were 2 people who had succeeded and were successful, so those who decided to not take

their part and give their brothers who lacked. Even though they already know the rights of each of the heirs.”<sup>6</sup>

From the above case it can be analyzed that the heirs do inheritance according to Islamic law where the male portion is greater than the female part. But still the path of deliberation that they prioritize. In terms of the distribution of inheritance all the sons and daughters of their married children were present to witness the distribution, even though in that case they only heard. They have no right to speak anything. Giving the heirs to other heirs is legitimate when a mutual agreement occurs because the heirs who do not want to receive that portion feel they have received a lot of assets while studying in college until the success of their wisdom gives their share to be handed over to their siblings those who need it more are not taking education like themselves. But before the father's part must be issued first, then the rest will be the inheritance.

### *Case II (Bada Village)*

“Abdul Karim married Khadijah in 1952, from the marriage blessed with 3 sons and 5 daughters. Their father Abdul Karim died in 2005. The deceased left inheritance in the form of land, houses and other movable objects. However, because the 8 children were afraid of their property being controlled by one of the heirs, they deliberated to share their inheritance. And all of them agreed, it was determined that the day for distribution was then collected by all their children. Because they all understand will uphold togetherness so as not to create greed among them. So they all decided that the property was divided equally among their children.”<sup>7</sup>

From the details of the above cases can be analyzed and concluded that they do inheritance division not based on Islamic law where the male portion is greater than the female part. But prioritizing the even distribution that is commonly used in the distribution of inheritance in Dompu, this is clearly contrary to the Islamic inheritance law which has clearly regulated where the male and portion is greater ½ compared to the part received by female heirs, but this is not a problem for all heirs, arguing for avoiding conflict and justice according to heirs.

### *Case III (Potu Village)*

“H. Ismail is married to Hj. Ros in 1977, from the wedding was blessed with 2 boys and 3 girls. H. Ismail and Hj. Rosmalia divorced in 2006. H. Ismail has a lot of property in the form of land in Dompu District, Kempo District, Hu sub-district, u, then three private houses and other movable objects. However, because H. Ismail had a history of heart disease, according to H. Ismail's wisdom, he had distributed the assets he had in October 2018 to the five children, which each of his children was given land based on his will and with the record that the assets in the form of land and movable objects given to each of his children said to be inheritance and no longer entitled to claim his rights when H. Ismail passed away, all inheritance was divided based on the wishes of H. Ismail which was more inclined to resemble the grant, without considering the rules for the distribution of inheritance in Islamic teachings that distinguish between male and female

<sup>6</sup> Interview with Mr. H. Zakariah who resolved cases of inheritance in Islamic inheritance in a familial way, where the portion of a boy is twice the share of a girl

<sup>7</sup> Interview with Ms. Khadijah who completed the distribution of inheritance by deliberation by distributing it equally to the heirs to the property becoming inherited boedel.

parts, and consideration of the legitimate requirements for the opening of inheritance is when someone dies.”<sup>8</sup>

From the results of the study In the Dompu Sub-district community represented by three sub-districts namely, the Dorotangga Sub-District, Bada sub-district and Potu sub-district each village was taken by a family representative, that the equation was found in distributing inheritance through grants, and distributing inheritance when Heir is still alive because it is a customary custom that still lives and develops in the midst of the Dompu community.

In relation to that, the Dompu people have always carried out inheritance distribution processes like this, their religious consistency is also relatively very strong but there are still many people in the inheritance process who use customary law. The giving of the life of a parent is considered to be the normal thing and the obligation of parents especially when their children are getting married.

The application of Islamic inheritance law in Dompu has not been fully implemented by the community, only a small number of residents have implemented the application of Islamic inheritance law.

### ***3. Factors Affecting the Distribution of Inheritance Through Grants in Dompu District***

In this study the researchers found several factors that influence the distribution of inheritance through grants in Dompu District, while these factors are as follows:

#### **a. Concern Factors of Conflict**

The purpose of giving during life is to require inheritors to distribute property in an appropriate manner according to the presumption of inheritance and also to prevent disputes. Distribution of inheritance through grants during the life of a parent is a good purpose.

Based on the results of interviews with several sources described earlier, it can be illustrated that in the development of inheritance law in Dompu, one of the factors affecting the distribution of inheritance through grants was motivated by concerns from parents as heirs who wanted to be wise to their children as heirs. by distributing inheritance by giving away his property as soon as he lives so there is no conflict in the future when he dies.

The distribution of inheritance in Dompu recognizes the principle ‘ditaho mena kai (propriety) which has long lived and developed in the midst of the Dompu community, can be an alternative to approaching justice in the practice of inheritance. ‘Ditaho habits or culture means that the inheritance of inheritance contains the values of local wisdom (al-urf) which are accommodated in Islam. The essence of aho ditaho reflects in this context is the realization of the values of justice and the creation of harmony between heirs. Which in the Bima language meaning to be good and no problem, get along well and peacefully.

#### **b. Economic Factors**

Family economy is something that cannot be separated from human life. Along with the development of the times, of course the need for humans increases because the economy continuously experiences growth and change. Changes that generally occur in an economy experienced by a country such as inflation, unemployment, employment opportunities, production, and so on. If this matter is

<sup>8</sup> An interview with Mr. H. Ismail who carried out the distribution of inheritance using the grant method was shared by the heir during his lifetime.

handled properly then a country experiences a stable economic condition, affecting the welfare of the lives of the population in that country.<sup>9</sup>

With the growing needs of the people of Dompu Subdistrict, of course the needs of the community are increasing, so it also influences the form of inheritance through grants to the Dompu Subdistrict community during this lifetime, namely the giving of land or fields of inheritance. Usually given to boys as assets to be managed and as a place to make a living while all girls are given what is in the contents of the house.

In general, in the Dompu community in terms of the distribution of inheritance through the grant, that inheritance or inheritance given by parents should not be used or sold for unnecessary interests, inheritance may be used as long as for the purposes of the heirs who urgent, such as to improve the family economy, school fees, farming costs, businesses and the like that prioritize mutual benefits. In the use of inheritance by heirs or one of the heirs is also decided through consensus agreement.

Many parents provide inheritance rations that should not have been given when they were still alive, but the hopes of parents for their assets can be immediately managed and utilized to improve the family's economy and children can be independent. The economic condition of the people in Dompu sub-district which still has economic inequality, the level of poverty and unemployment is still high, and the per capita income is still low, very influential on the distribution of inheritance through grants from parents to children, in an effort to improve the family's economic system.

c. An effort to protect the absolute part of the heirs

In the sub-district of Dompu, the term *keputusan* is known as *ditahomenakai*, In Bima language (*mbojo*) which is the main language used by the people of Dompu Regency. This word means for good, appropriate, appropriate or appropriate. 'Ditaho says in principle that everything is in place. Obligations that are dedicated to obtaining commensurate rights are something that is appropriate. Many or few, not questioned in the concept *aho ditaho mena kai* take a little if the little ones bring good, and reject the many if the many bring destruction.

The culture of *aho ditaho mena kai* (value of obedience) in the Dompu community is an approach in looking at justice in the format of inheritance, so that the application of inheritance texts is not rigid, because they refer to decency which is considered to reflect justice. In other words, the application is relevant to the principle of *zhanni al-tanfīdz wa qath'i al-wurud* (absolute text and elasticity in its operations). With this rule the ulama seeks to capture the ideal message or the spirit of justice.

From the results of the study that it can be described that the development of inheritance law that shares inheritance through grants to the Dompu Subdistrict Community is found to be a problem that starts with assets that have been used by one of the heirs in the process of studying in college, business capital, farming capital the cost of marriage (dowry), the cost of taking part in the Police / TNI selection and the like, many inheritance that is used by one / several male heirs as prospective family heads, so this affects the distribution of inheritance through grants, and the wisdom of parents Determine keeping the parts that must be received by the daughter, remembering the amount of assets that have been sold and utilized by the heirs.

That there are similarities from traditional inheritance law in Dompu with Islamic inheritance law, namely maintaining the absolute part for other heirs, to avoid and protect the absolute part of the heirs who do not get and enjoy the assets of the parents during the life of the parents (heirs) However, in maintaining the absolute part of all their children, Dompu's customary inheritance law tends to be based on the will of parents as heirs in determining the portion of the grant that will be given to their children when the parents are still alive, this none other than as a form of wisdom from parents to their children so that they are not favoritism.

<sup>9</sup> Hasbullah, *Dasar-Dasar Ilmu Pendidikan*, Jakarta, Reneka Cipta, p. 123



### *Overview of Islamic Law against the Customary Law of the Dompu Community concerning the Distribution of Inheritance through Grants*

The distribution of inheritance through grants to the habits of the Dompu District community gives its own uniqueness in Indonesian inheritance legal pluralism. The fact that the majority of the Dompu people embraced Islam, the Dompu Society was in no way given the choice of using customary law or Islamic inheritance law.

The form of inheritance or inheritance according to Islamic Law is very different from the form of inheritance according to customary law. Inheritance or inheritance according to Islamic Law is "A number of property and all rights of the deceased are clean". This means that the inheritance inherited by the heirs is a number of property and all rights, "after deducting the payment of the inheritor's debts and other payments caused by the death of the heir's heir".<sup>10</sup>

The implementation of the distribution of property to the heirs carried out by the heir while still alive, this is also related to the practice of inheritance through grants to the Dompu District community, which is accommodated in article 195 points (3) and 211 Compilation of Islamic Law. Article 195 point (3) states that "Testament to heirs is only valid if it is approved by all heirs". The article 211 states that "Grants from parents to their children can be calculated as inheritance".

### *Provisions of Islamic Law concerning Assets That Can Be Granted*

With the differences of opinion expressed by the experts in Islamic law, it will enrich the insight of Islamic society in Indonesia in terms of grants. The first opinion allows giving all the assets of the heirs. While the Hanafi school forbids to give all the grants because above there is still the right of the heirs.

Based on Article 211 KHI, Regarding unauthorized grants as opposed to KHI, if the grant exceeds the absolute portion of the heir, then the grant is calculated as inheritance which must be reduced and if less can be added from the amount that should be accepted as heir. The hadith of the Prophet Muhammad, which was narrated by Imam Ahmad, namely:

"It is not lawful for a Muslim to give something to give then he withdraws his gift except for a father who asks for a gift given to his child."<sup>11</sup>

From this *saheeh* hadith and associated status of the grant in this case is basically a grant given by parents to their children. So in Islamic law, these assets are not counted as grants but as inheritance, so it is very inappropriate if the inheritance is only given to one heir.

### *Analysis of the legal certainty of the distribution of inheritance through grants to the Dompu Sub-District Community*

When referring to the provisions of the Koran, Hadith, KHI, Law Number 7 of 1989 as amended to Law Number 3 of 2006 concerning the Religious Courts, and various legal rules such as related laws and legal norms others who live in the midst of society, that basically when those who are subjects in this case are Indonesian citizens who are Muslim, then the inheritance should be based on Islamic law. And when there is a dispute in the inheritance of Muslims who have been regulated in Law Number 7 of 1989

<sup>10</sup> Wirjono Prodjodikoro, op. cit., p. 17.

<sup>11</sup> Anshori, Abdul Ghofur, Prof. Dr., *Filsafat Hukum Kewarisan Islam: Konsep Kewarisan Bilateral Hazairin*, UII Prees: Yogyakarta, 2010, p. 81.

as amended by Law Number 3 of 2006 in Article 49 paragraph (1) letter d, it is affirmed that the Religious Courts in adjudicating grant disputes must be based on Islamic law.

Whereas the ruling of the Supreme Court judges in the legal review of the judicial review is in accordance with Article 211 KHI which reads “grants from parents to their children can be calculated as inheritance.”<sup>12</sup>

Therefore, the grant referred to in Article 211 KHI is calculated as inheritance because it involves inheritance rights for the heirs (children) whose provisions and parts have been determined by Allah SWT in the Koran.

From the results of the study found a correspondence and difference between Islamic inheritance law and customary inheritance law in the Dompu Sub district community in the distribution of inheritance properties carried out through grants.

Restrictions on the Making of Grants relating to the distribution of inheritance through Dompu Sub district if Based on Islamic law, inheritance after deduction to pay off the debts of the deceased, 1/3 (one third) of inheritance can be given to someone other than his heir based on the law of Islamic religious heritage or which is not based on inheritance law in the distribution of inheritance (heirs *ab intestato*), meaning heirs without a will. Or in other words, that at least 2/3 (two thirds) should be available to be distributed to the heirs, even for disadvantaged families it is recommended that the assets handed over to others be smaller than 1/3 part.

In written law, verbal and written grants that violate the absolute part of other heirs are considered “null and void” by themselves and are considered not to have binding powers from the start.

This is in accordance with Article 49 of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning the Religious Courts (Law 3/2006), which reads:

The religious court has the duty and authority to examine, decide and settle cases in the first level between Muslim people in the fields of:

- a. Marriage;
- b. Inheritance;
- c. Will;
- d. Grant;
- e. Endowments;
- f. Zakat;
- g. Infaq;
- h. Sadaqah; and
- i. Shari’ah economy.

The compilation of Islamic Law (KHI) in Article 188 explains that:

“Heirs either jointly or individually can submit requests to other heirs to distribute inheritance. If any of the heirs does not approve the request, then the person concerned can file a claim through the Religious Court for the distribution of inheritance.”

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<sup>12</sup> Nur, Rahmah, Tinjauan Hukum Islam Terhadap Adat Ampikale Pada Masyarakat di Kecamatan Pammana Kabupaten Wajo, Fakultas Syariah dan Hukum Uin Alauddin Makassar, <http://repository.uin-alauddin.ac.id/991/1/Nur%20Rahmah.pdf>. Last accessed on April 25, 2018. Pammana Wajo District, Faculty of Sharia and Uin Alauddin Makassar Law.

Distribution of inheritance through a grant in Dompu Subdistrict, which has been distributed through the process of transfer of inheritance from parent to child or from heir to heir as in the case described in the previous discussion that the distribution of inheritance is more to the parents' grant to their child as close as inheritance.

Customary Law and Islamic Law that live and develop in Indonesia are also related to the lives of the Dompu sub-district people, many new issues in inheritance law that greatly influence family harmony, as a form of legal uncertainty in the distribution of inheritance to Dompu Subdistrict, where many experts inheritors who have agreed to use customary law in the distribution of inheritance, namely by means of grants, but some heirs who do not have good intentions and violate the values of the agreement on inheritance distribution through grants when parents are still alive, demanding to return inheritance with rules Islamic inheritance law, it is not uncommon for such matters to cause a lot of legal problems that have an impact on harmonious family relations, therefore if examined this does not provide legal certainty in the practice of inheritance distribution through grants to the Dompu community.

## ***Conclusion***

Based on the results of the research and discussion above, the author can draw conclusions as follows:

1. Factors that influence the distribution of inheritance through grants to the Dompu Subdistrict Community are the Concern Factors of family conflict, Economic Factors and Factors that attempt to protect the absolute part of the heirs.
2. In terms of the distribution of inheritance through grants to the Dompu Sub District community, it is not yet able to provide legal certainty which is proven that there is still a legal loophole to deny mutual agreement in the family that comes from the Law of Customary inheritance. The fact is that in Dompu Sub district community, there are relatively many part of the heirs who do not have good intentions and deny the values of the agreement that demands to be distributed based on Islamic Law regulated in the Compilation of Islamic Law, under the pretext that this is a guideline for the Community a variety of Islam in the distribution of inheritance, of course it affects the harmony and harmony of family relations.

## ***Recommendation***

It is hoped that the Government will be able to draft a special Law on National inheritance Law that can accommodate the values of the inheritance system of customary law, the Civil Code, and the Compilation of Islamic law.

With the existence of a special legislation on inheritance that can be accepted and applied nationally, it is hoped that it can minimize the emergence of conflicts and legal loopholes, from heirs who do not have good intentions, namely by curbing agreements aimed at benefiting themselves and the wider again affects the split in the family. That is, if it is still allowed, the State cannot guarantee and provide value for certainty, benefit and justice in terms of inheritance law in Indonesia.

## ***References***

Abdulkadir Muhammad. (2004). *Hukum dan Penelitian Hukum*. First edition, PT. Citra Aditya Bakti, Bandung.

Ahmad Rofiq. (1995). *Hukum Islam di Indonesia*. Raja Grafindo Persada, Jakarta.

- Anshori, Abdul Ghofur. (2010). *Filsafat Hukum Kewarisan Islam: Konsep Kewarisan Bilateral Hazairin*. UII Prees: Yogyakarta.
- Surini Ahlan Syarif. (1983). *Intisari Hukum Waris Menurut Burgerlijk Wetboek*. Ghalia Indonesia, Jakarta.
- Hazairin. (1981). *Hukum Kewarisan Bilateral Menurut Al-Qur'an dan Hadist*. Tintamas, Jakarta.
- Hasbullah. (2004). *Dasar-Dasar Ilmu Pendidikan*. Reneka Cipta, Jakarta.
- Mukti Fajar ND & Yulianto Achmad. (2013). *Dualisme Penelitian Hukum Normatif & Empiris*. Mold II. Pustaka Pelajar, Yogyakarta.
- Peter Mahmud Marzuki. (2009). *Penelitian Hukum*. Kencana, Jakarta.
- Peter Mahmud Marzuki. (2006). *Penelitian Hukum*. 2nd edition of the first print. Kencana Prenada Media Group, Jakarta.
- Salim HS & Erlies Septiana Nurbani. (2014). *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*. 3rd Printing, PT. Raja Grafindo Persada, Jakarta.
- \_\_\_\_\_, (2015). *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*. 2nd mold printed. PT. Raja Grafindo Persada, Jakarta.
- Sugiyono. (2015). *Memahami Penelitian Kualitatif*. Eleventh Mold Alfabeta. Badung.
- Soerjono Soekanto and Sri Mamudji. (1995). *Penelitian Hukum Normatif*. Raja Grafindo Persada, Jakarta.
- Sugiyono. (2014). *Metode Penelitian Kuantitatif Kualitatif dan R & D*. 21st print. Alfabeta.
- Soerjono Soekanto & Sri Mamuji. (1984). *Penelitian Hukum Normatif*. Rajawali, Jakarta.
- Soetrisno Hadi. (1985). *Metodologi Research Jilid II*. Yayasan Faculty of Psychology Publisher: UGM, Yogyakarta.

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